

**STATE OF MICHIGAN**  
**IN THE SUPREME COURT**

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

v

SHAWN LEON JENKINS,  
Defendant-Appellee.

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Supreme Court  
No. 125141  
Court of Appeals  
No. 240947  
Circuit Court  
No. 01-1356 FH

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**PLAINTIFF-APPELLANT'S BRIEF SUPPLEMENTING ITS APPLICATION  
FOR LEAVE TO APPEAL**

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**STATEMENT IDENTIFYING JUDGMENT APPEALED FROM AND RELIEF  
SOUGHT**

Plaintiff-Appellant, the People of the State of Michigan, has applied for leave to appeal the judgment of the Michigan Court of Appeals in *People v Shawn Leon Jenkins*, unpublished opinion per curiam of the Court of Appeals, decided November 18, 2003 (Docket No. 240947). This supplemental brief is filed with the permission of this Court's September 16, 2004, Order to schedule oral argument.

## **STATEMENT OF QUESTION PRESENTED FOR REVIEW**

I. Should this Court grant Appellant's application for leave to appeal, or, in the alternative, grant other relief consistent with reversing both the trial court's suppression order and the Court of Appeals' decision affirming that suppression?

Plaintiff-Appellant answers, "Yes."

Defendant-Appellee answers, "No."

The circuit court answered, "No."

The Court of Appeals Majority answered, "No."

## **STATEMENT OF FACTS**

Plaintiff-Appellant incorporates by reference the Statement of Facts in the Application for Leave to Appeal.

## ARGUMENT

**I. This Court should grant Appellant's application for leave to appeal, or, in the alternative, grant other relief consistent with reversing both the trial court's suppression order and the Court of Appeals' decision affirming that suppression.**

### Standard of Review

Appellant, the People of the State of Michigan, incorporates by reference the Standard of Review submitted in its Application for Leave to Appeal.

### Discussion

In anticipation of the upcoming oral argument before this Court on whether to grant Appellant's Application for Leave to Appeal or take other peremptory action, Appellant takes this opportunity to supplement its Application with a number of points it believes are potentially relevant and helpful to this Court's task.

The Court of Appeals majority found it compelling that "although (Defendant) attempted to walk away, the officers followed him, continually 'encouraged' him to wait (remain), and finally ordered him to remain."<sup>1</sup> Appellant submits that this point of analysis was tantamount to a finding that the officers' act of following Defendant triggered an escalation in the type of police/citizen encounter, an escalation requiring at least reasonable suspicion. And if that was what the Court of Appeals' majority meant, then it was plainly contrary to the United States Supreme Court's decision in *California v Hodari D.*<sup>2</sup> Just as the defendant in that case "was not seized until he was tackled,"<sup>3</sup> the earliest police conduct that represented a constitutional escalation in the encounter occurred when the officer put his hand on Defendant, and not before. Therefore, each

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<sup>1</sup> *People v Jenkins*, unpublished opinion per curiam of the Court of Appeals, decided November 18, 2003 (Docket No. 240947), majority opinion at p3.

<sup>2</sup> *California v Hodari D.*, 499 US 621; 111 S Ct 1547; 113 L Ed 2d 690 (1991).

<sup>3</sup> *Hodari D.*, 499 US at 629; 111 S Ct 1552.

fact and circumstance and inference arising before that point in the encounter are permissibly inserted into the reasonable suspicion calculus consistent with the opinion of the dissenting judge below.

As noted in Appellant's Application for Leave to Appeal, however, this is an unnecessary calculus. The record more than supports the police officers' reasonable actions vis-à-vis responding to a potential trespassing complaint. While Appellant's Application focused on the officers' investigation, Appellant takes this opportunity to supplement that analysis by pointing out that not only was it reasonable for police to ascertain Defendant's identity and investigate it against those who had previously been trespassed from the public housing location, but it was also reasonable for police to ascertain both Defendant's identity and business at that location. Although the subsequent discovery of Defendant's gun overshadowed the issue, the officers were authorized – given an insufficient rationale for Defendant's future presence – to add his identity to the roles of those trespassed from the location consistent with their responsibility to police trespass violations at the housing project.<sup>4</sup> Thus, even if the officers lacked reasonable suspicion that a crime was being committed in their presence, it was reasonable for them to take actions consistent with their ongoing (into the future) responsibilities to enforce trespass at that location.

Furthermore, the analysis in the above paragraph is itself mooted if this Court finds, as it should, that regardless how reasonable the officers acted regarding the trespass issue, it did not alter the fact that the request for Defendant's identification was of an entirely consensual nature. On this point, not surprisingly, Appellant urges the analysis of the dissent over that of the majority in the Court of Appeals. Indeed, the majority

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<sup>4</sup> Hearing Transcript, 1/24/02, p6.



opinion abdicated its analytical responsibilities in failing to address the issue whether the officer's request for identification negated the consensual nature of the initial interaction.<sup>5</sup> This Court recognizes three tiers of police-citizen encounters;<sup>6</sup> the Court of Appeals majority erred in failing to analyze the first tier. The dissent, on the other hand, not only considered the first tier, it correctly applied it.

But moving forward analytically from that point, Appellant submits an additional argument not found in the dissent's opinion. Instead of accepting the original confrontation as consensual and then moving into consideration of the officers' acquisition of reasonable suspicion, as the dissent correctly did, Appellant also submits that once the officers learned Defendant's identity, an eventual arrest and discovery of the firearm at issue was a *fait accompli*. In other words, even if this Court concludes that the officers lacked the requisite level of suspicion at the point in time when they physically controlled Defendant (a point Appellant does not concede, but rather agrees with the dissent's analysis), it is clear from the record that the officers neither factually nor legally exploited any arguably constitutionally deficient seizure. Not only would the LEIN results have given the officers probable cause to arrest Defendant and search him incident to that arrest, but the LEIN results in fact led to that arrest. And regardless whether Defendant's gun was discovered as the result of a search incident to that arrest, or whether it was discovered as a result of the physical act of arresting Defendant, the gun "ultimately or inevitably (was) discovered by lawful means."<sup>7</sup> Akin to this Court's

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<sup>5</sup> Appellant concedes that the omission can be tacitly understood as a finding contrary to the existence of a consensual encounter. But given the explicit discussion of this exact issue by the dissent, the majority's omission seems more of a dodge than an analysis.

<sup>6</sup> *People v Shabaz*, 424 Mich 42, 56-58 (1985).

<sup>7</sup> *People v Kroll*, 179 Mich App 423, 429 (1989).

analysis in *People v Stevens (Aft Rem)*<sup>8</sup> of the consequences of a violation of the knock and announce statute, the officers in the case at bar legally arrested Defendant and seized his gun during that legal arrest.<sup>9</sup> Therefore, even if the officers' conduct was unreasonable between the consensual relinquishment of Defendant's identification and the arrest based on the LEIN information, "exclusion of the evidence (would) put the prosecution in a worse position than if the police misconduct had not occurred."<sup>10</sup> Such a result is antithetical to the exclusionary rule and the purposes behind it. This last prong of analysis is of course only necessary if this Court finds some unreasonableness on the part of the officers, a finding Appellant does not concede.

Instead, Appellant urges that this Court find that the request for Defendant's identification, and Defendant's compliance with that request, signified nothing more than a consensual encounter between the officers and Defendant; an encounter not implicating the Fourth Amendment. Appellant additionally and alternatively urges the conclusion that it would have been reasonable for the officers to briefly detain (as part of their trespass responsibilities) Defendant had he not complied with the request for identification. That the police accomplished consensually what they could have accomplished via detainment does not undermine the consensualness that led to their acquisition of Defendant's identity. The next analytically meaningful event occurred when the officers physically detained Defendant, an act supported by at least reasonable suspicion as articulated by the Court of Appeals dissent and argued by Appellant as existing even earlier than the dissent's analysis found. The next meaningful event was

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<sup>8</sup> *People v Stevens (Aft Rem)*, 460 Mich 626 (1999).

<sup>9</sup> *Stevens*, 460 Mich at 647.

<sup>10</sup> *Stevens*, at 647. See also *Stevens*, at 637, citing *Nix v Williams*, 467 US 431; 104 S Ct 2501; 81 L Ed 2d 377 (1984).

the communication of the LEIN results, which gave the officers probable cause to arrest Defendant. The final meaningful event was the officers' discovery of Defendant's gun during that lawful arrest. Finally, the arrest was lawful regardless of any intermediate arguments regarding the officers' conduct, a conclusion that prevents any sensible application of the exclusionary rule.

For any and all of the reasons offered above as supplementation of, and in addition to, Appellant's Application for Leave to Appeal, the trial court erred in excluding Defendant's gun from evidence, and the Court of Appeals majority erred in affirming that exclusion.

## RELIEF REQUESTED

Plaintiff-Appellant, the People of the State of Michigan, respectfully requests that this Court either grant its Application for Leave to Appeal, or take other peremptory action effecting a reversal of the trial court's suppression of Defendant's gun and a reversal of the Court of Appeals decision.

Respectfully submitted,

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October 13, 2004

### PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on 10/13/2004

By: ☐ U.S. Mail ☐ Express Mail  
☐ Hand Delivered ☐ Fax ☒ Inter Office

Signature Shirley A. [Signature]